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SPEAR AND HILL
63 WALL STREET
NEW YORK, N.Y. 10005

212-344-6200
CABLE: SPEARHILL NEW YORK
TELEX: 12-7752

48/54 MOORGATE
LONDON EC2R 6EL
01-628-0101
CABLE: SPEARHILL LONDON EC2
TELEX: 684964

PIAZZA di CAMPITELLI, 10
00186 ROME, ITALY
55-18-55
CABLE: SPEARHILL ROME

February 15, 1972

His Majesty Sultan Qaboos bin Said
Sultanate of Oman
Muscat, Oman

Your Majesty:

Your Majesty asked our opinion concerning the validity of certain claims made by Dr. Wendell Phillips and the Wendell Phillips Oil Company with respect to certain offshore areas of the Sultanate of Oman between Ras al Hadd and Ras Minji. In this connection, we had the privilege of an audience with Your Majesty and we have interviewed certain officials of Your Majesty's Government as well as other persons we considered to have knowledge of relevant facts in this matter. We have also reviewed such documents and conducted such investigations of fact and law as we deemed necessary and relevant to the expression by us of our legal opinion.

FACTS

Dr. Wendell Phillips ("Dr. Phillips"), a United States citizen residing in Hawaii, has been connected with

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the Sultanate of Oman in various capacities for a number of years.

Dr. Phillips, or corporations of which he was a principal shareholder, had been granted two oil concessions by Sultan Said bin Taimur of Muscat and Oman, in 1953 and in 1965. Both concessions were assigned to other interests shortly after their issuance. The 1953 concession was assigned to Cities Service Company and the 1965 concession was assigned to an international group of oil companies headed by Wintershall, a German company.*

At both these occasions, Sultan Said bin Taimur had apparently first sent or given an informal letter to Dr. Phillips advising him of his willingness to grant a concession. These letters then were followed by negotiations which ultimately resulted in the conclusion and the signing of formal agreements spelling out the terms of the concession grants.

It appears that at one occasion the informal letter opening negotiations towards the conclusion of yet another concession agreement had inadvertently described an area already under concession to another oil

* The 1953 concession and permission for its assignment were published in Basic Oil Laws and Concession Contracts, Middle East, Suppl. No. VI (Petroleum Legislation, New York); the 1965 concession has not been published in full text.

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company. When Sultan Said bin Taimur's advisers learned of this problem, they informed him that he could not enter into a substantive concession agreement with Dr. Phillips covering that area. Dr. Phillips was apparently informed of this and that particular letter never ripened into a concession agreement. There is no indication of representations or protests made by Dr. Phillips at that time that the letter had already conferred upon him the rights of a concessionaire over the area and that such rights had been subsequently denied to him by Sultan Said bin Taimur.*

In February 1971, or approximately seven months after His Majesty Sultan Qaboos bin Said succeeded his father as the Sultan, Dr. Phillips arrived at the airport in nearby Dubai. He did not have a visa which would permit his entry into the Sultanate of Oman. As a consequence, he called by telephone into Oman and was able to secure a visa. Dr. Phillips thereupon came to Oman and had an

* It would appear that Dr. Phillips referred to this letter in September 1971 in claiming that "back in 1965 a certain area of offshore [sic] in South Arabia was made available by the former Sultan Said." Transcript of press conference by Dr. Wendell Phillips, London, September 17, 1971 (hereinafter cited "Transcript") p. 5, citing Dr. Phillips' book, "Unknown Oman" as authority. A copy of the Transcript is attached to this opinion as Exhibit A.

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audience with His Majesty Sultan Qaboos bin Said. During this audience Dr. Phillips stated that he had previously tried to persuade His Majesty's father to grant him a further concession over offshore areas in the southern part of the Sultanate and asked that he be permitted to produce a proposal for examination by His Majesty. Dr. Phillips did not state or claim that he had received a "concession" from His Majesty's father over such areas at this audience or at subsequent meetings with His Majesty and Omani officials. His Majesty generally indicated his willingness to consider the grant of an oil concession. His Majesty directed Mr. Phillip A. Aldous ("Mr. Aldous"), Secretary for Financial Affairs of the Sultanate of Oman, to ascertain which offshore areas were free and available for grant.

At a subsequent audience with His Majesty during the month of February, Dr. Phillips presented a short comparative analysis of financial terms he proposed to offer and those existing in two oil concessions previously granted by the Sultanate. A verbal agreement was reached between His Majesty and Dr. Phillips that a signature bonus of \$1 million would be payable upon the execution of the concession agreement.

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There was no discussion between His Majesty and Dr. Phillips of substantive terms to be included in the proposals. His Majesty stated that it was Mr. Aldous' function to discuss terms and directed Dr. Phillips to give his comparative data to Mr. Aldous. During the course of meetings in February 1971 in Oman, Mr. Aldous was advised by Dr. Phillips that the signature bonus would be \$1 million. The general area to be covered by the proposals was discussed between Mr. Aldous and Dr. Phillips.

Mr. Aldous advised His Majesty that the general outline of financial proposals could be acceptable to the Sultanate as a basis for a proposal and was directed by His Majesty to draw up a letter expressing His Majesty's agreement in principle to grant an oil concession over the available offshore areas, provided the submitted terms were acceptable to His Majesty. His Majesty also stated his wish to Mr. Aldous that the concession agreement follow the OPEC agreement structure.

Dr. Phillips had already left Oman when Mr. Aldous presented the letter in the form of a memorandum dated March 7, 1971 for His Majesty's signature. In drafting the document, Mr. Aldous had followed the format

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previously used in similar letters by Sultan Said bin Taimur.
The text of the document, as signed by His Majesty Sultan
Qaboos bin Said, reads as follows:

"Greetings,

With reference to our conversation regarding the offshore areas of Our Sultanate from Ras al Hadd to Ras Minji, We are pleased to grant you an Oil Concession for the area as defined hereunder, allowing you a period of four months from April 1, 1971 to submit to Us proposed arrangements which will be subject to Our approval.

The area shall be:

'[geographical description of
the area]'**

On March 9, 1971 Mr. Aldous sent two identical telegrams to Dr. Phillips, one to Dr. Phillips' office in Honolulu and the other to a hotel address in Singapore. The text of the telegrams follows:

"CONCESSION GREEN LIGHT AREA DISCUSSED
YOUR VISIT STOP PROPOSALS REQUIRED
WITHIN FOUR MONTHS APRIL FIRST 1971
LETTER FOLLOWS REGARDS - ALDOUS - "

On or about March 18, 1971 Mr. Aldous was on official business in Washington when Dr. Phillips called him over the telephone. In this conversation Dr. Phillips

* A copy of the March 7 document is attached to this opinion as Exhibit B.

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indicated that he had received the March 9 telegram, but not the March 7 document which Mr. Aldous advised him had been sent to Singapore on the same day as the cable. Dr. Phillips introduced Mr. Darrell Danker ("Mr. Danker") as the person who would have a major role in negotiating and drafting the concession agreement.

In explaining his request for a copy of the March 7 document, Dr. Phillips stated:

"Oh, I just wanted to tell you why, Phillip. I will be putting up part of the money for this deal -- We'll be a principal in the thing with my own oil company -- I want to bring some partner companies in ... and I want to do a nice feature [in an oil magazine] on Oman and Qaboos and the stability of the country and the oil projected for the future, because it will enable us to get a greater signature bonus and [inaudible word] different companies would be able to contribute for my share..."

In discussing the period set for the submission of proposals, the following was said:

"[Dr. Phillips:] - ... Now I understand the period of time is four months.

[Mr. Aldous:] - Yes. Qaboos wants it on his anniversary, the 23rd of July.

[Dr. Phillips:] - No kidding. Well, that is an awfully short period of time.

[Mr. Aldous:] - I know but He thought you could cope.

[Dr. Phillips:] - I'll do it.

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[Mr. Aldous:] - I'm sure you will.

* * *

[Dr. Phillips:] - I need to know, it was from Ras al Hadd to Ras Minji?

[Mr. Aldous:] - Yeah, but excluding that Shell portion -- the part that they hadn't released -- that we showed you on the map.

[Dr. Phillips:] - Yeah, I remember that.

[Mr. Aldous:] - You said you would negotiate with Shell over that.

[Dr. Phillips:] - Sure, there is no problem at all.

* * *

[Dr. Phillips:] - And, but I will not hold up any of our financial arrangements and I will deliver this thing to you and Qaboos on Qaboos' birthday a day complete on the terms you and Darrell agree upon and if we get the area from Shell, fine, if we don't get the area from Shell we'll go right ahead anyway.

[Mr. Aldous:] - Good, good, that's a good start."

Mr. Aldous and Mr. Danker met shortly after this telephone conversation to discuss terms for the contemplated agreement. Mr. Aldous made it clear that it would not be necessary to reflect the signature bonus in the agreement because the amount was to be paid upon the signing of that agreement.

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After Mr. Aldous had returned to Oman, there was an exchange of correspondence between him and Mr. Danker with respect to certain clauses of the future agreement. Specific reference is made in that correspondence to the \$1 million signature bonus.

In early July 1971, His Majesty and Dr. Phillips had a meeting in London. Dr. Phillips expressed his hope that everything would go well with the proposed concession agreement and asked His Majesty whether he, Dr. Phillips, should come to Oman and present the agreement and the \$1 million signature bonus personally. His Majesty stated that this would be appropriate. There was another meeting at dinner with Mr. Aldous and a breakfast with His Majesty and several other persons present. There is apparently some confusion as to whether any extension of the time period fixed for this presentation was discussed or given at any of the London meetings. We simply note that at his September 17, 1971 press conference Dr. Phillips, obviously referring to the meetings in London,* has stated:

" ... subsequently I met with His Majesty the Sultan, I met with the Financial

* These were the only meetings between His Majesty and Dr. Phillips subsequent to the February meetings in Oman.

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Secretary. They explained to me that what was important was to get the work done quickly ..."*

In any event, there was no contact between the parties subsequent to this meeting until Mr. Danker arrived in Oman on or about August 6, 1971 and presented a draft of a proposed concession agreement to Mr. Aldous. Mr. Aldous was advised by Mr. Danker that he had a power of attorney from Dr. Phillips to sign the agreement, but that no immediate payment of the signature bonus could be made. Dr. Phillips, Mr. Danker explained, was having some liquidity problems due to heavy investments in oil concessions in Indonesia and Korea. He stated that Dr. Phillips would raise funds in Switzerland through the sale of stock in his oil company. Mr. Danker also told Mr. Aldous that he had a personal check from Dr. Phillips for the signature bonus but that he would request His Majesty to hold the check for about two months. Mr. Aldous expressed his doubts that such a request was in the spirit of the understanding of July between His Majesty and Dr. Phillips, but Mr. Danker responded that he would ask His Majesty to accept a post-dated check.

* Transcript, p. 7. Dr. Phillips did not claim at his press conference that an extension of time was even discussed. In a telegram to Mr. Aldous, dated September 13, 1971, he asserted, however, that he had been given extra time at the London meetings.

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Certain changes in the draft agreement were made by Mr. Aldous and Mr. Danker and, on or about August 8, 1971, Mr. Danker, accompanied by Mr. Aldous, had an audience with His Majesty. Mr. Danker requested on behalf of Dr. Phillips that His Majesty accept the latter's post-dated check,* saying that Dr. Phillips had stretched himself financially in other areas.** His Majesty refused to accept such a check and suggested that Mr. Danker tell Dr. Phillips to come back to Oman "at the end of the month"*** with a good check. Asked whether he thought that Dr. Phillips could do this, Mr. Danker said only that he would advise Mr. Phillips of His Majesty's position.

As it had developed that the agreement would not be signed, it was suggested to Mr. Danker that he take the draft and have it printed. Shortly thereafter, Mr. Danker departed from Oman, after a telephone conversation of unknown content with Dr. Phillips.

* The actual check was not shown to either His Majesty or Mr. Aldous.

** This time no reference was made to Dr. Phillips' purported efforts to raise funds in Switzerland.

*** In his London press conference, Dr. Phillips asserted that the "understanding was that everything would be completed and that I would return a month from August the 8th." Transcript, p. 7. He did not mention during this press conference the request that a post-dated check be accepted by His Majesty.

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Since no communication had been received in Oman from Dr. Phillips about his expected arrival, Mr. Aldous sent the following telegram to Dr. Phillips' Honolulu office on August 31, 1971:

"GRATEFUL YOU ADVISE DATE ARRIVAL OMAN(.)
SIGNATURE BONUS DUE JULY 23 TERMS YOUR
PHONECALL WASHINGTON MARCH 19(.) OTHERS
PRESSING REGARDS ALDOUS

-FINAFF-"

In reply, a visa request was received from Dr. Phillips on September 3, 1971, in which the reason adduced for the delay was the serious illness of Professor William F. Albricht, an old friend and associate of Dr. Phillips.

On September 6, Mr. Aldous called the Officer in Charge of the Passport Section in the Ministry of Foreign Affairs of the Sultanate and requested that authority be cabled to the British Consul in Honolulu for the issue of a visa to Dr. Phillips.* The request was confirmed in writing by Mr. Aldous on the same date and the Ministry of Foreign Affairs on the same day requested the British Embassy in Muscat to cable the visa authorization to the British Consul in Honolulu. Still on the same day, September 6, 1971, the British Embassy sent out the visa authorization through the facilities of Cable and Wireless

* By special arrangement, British Consuls in 1971 performed visa issuance services for the Sultanate of Oman.

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Ltd.*

On September 7, 1971, Dr. Phillips sent another request for a visa. When his cable was received by Mr. Aldous, it was assumed by him that the two cables had crossed each other en route.**

It was on or about September 12, 1971 that Dr. Phillips flew to Singapore, without an Omani visa.

There is no reason to doubt Dr. Phillips' assertion at his London press conference and thereafter that the visa authorization sent on September 6, 1971 had not been received by the British Consulate in Honolulu prior to the receipt by that consulate of a cable cancelling the authorization. Subsequent investigations by Cable and Wireless Ltd. have been able to trace the cable at least as far as New York and the company indicated that the telegram might have gone astray in the Western Union system in the United States.

On September 12, 1971, His Majesty inquired of

* The letter of the Foreign Ministry of the Sultanate and a copy of the cable sent by the British Embassy in Muscat are attached together as Exhibit C.

** In his September 17 press conference, Dr. Phillips stated that he had "a little sickness" which required hospitalization, but he also indicated that this fact had not been mentioned in his September 7 follow-up cable "for I did not want to concern His Majesty with my welfare." Transcript, p. 10.

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Mr. Aldous about Dr. Phillips and upon being advised that the latter's plans were not known, His Majesty ordered that a telegram be sent to Dr. Phillips "cancelling" the "offer". The following cable was sent at about 6 p.m. on September 12, 1971 to Dr. Phillips' Honolulu office:

"BECAUSE OF EXTENDED DELAYS HIS MAJESTY
HAS CANCELLED OFFER TO YOU OF OFFSHORE
OIL CONCESSIONS(.) HM CONSIDERS VISIT
TO OMAN OF NO VALUE NOW(.) WRITING

-FINAFF-

In the evening of September 13, 1971, Dr. Phillips cabled to Mr. Aldous from Singapore asking that he be permitted to come to Oman to appeal His Majesty's decision. His repeated telegraphic requests were unheeded, however.

On September 14, Dr. Phillips, still in Singapore, was advised by Mr. Aldous by cable that His Majesty intended to advertise the areas of the Sultanate not under concession for competitive tenders. The cable also suggested that Dr. Phillips, if ready to present his proposal and make the signature bonus payment, as claimed in his cables from Singapore, could have done what he had done in February 1971: fly to Dubai and secure permission to enter Oman over the telephone.

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On September 17, 1971, Dr. Phillips held a press conference at the Grosvenor House Hotel in London, during which he gave a highly personalized account of the events and stated his position that

" ... there was no question of an 'offer' but a concession granted by His Majesty Qaboos bin Said, over his own signature dated 31st [sic] March, 1971."*

This position has been reaffirmed by a news release dated September 28, 1971 and distributed to the press on behalf of the Wendell Phillips Oil Company and Dr. Phillips by G. F. Metcalfe International Ltd., a London public relations firm.** In this press release the Wendell Phillips Oil Company, "having consulted leading specialists in international law," asserted "that the oil concession ... granted to Dr. Wendell Phillips personally by H. M. Sultan Qaboos bin Said ... and signed by His Majesty personally on the 7th March, 1971 is valid, legal and binding." The release also threatened "to hold legally responsible ... any individual company consortium group ... which take[s] any action

* Transcript, p. 11. There appears to be a mistake in the date given. Dr. Phillips was obviously referring to the March 7, 1971 document.

** A copy of this news release is attached to this opinion letter as Exhibit D.

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unauthorised by the Wendell Phillips Oil Company or Dr. Wendell Phillips to endanger the concession ... in any way by bidding, surveying, exploring, exploiting or by carrying out any unauthorised activity"

On October 1, 1971 the New York law firm of Olwine, Connelly, Chase, O'Donnell & Weyher gave notice to His Majesty that the firm will represent Dr. Phillips "in any legal action or actions that may be necessary against other individuals or companies resulting from the recent misunderstandings regarding Dr. Phillip's [sic] offshore oil concession from Ras al Hadd to Ras Minji granted by you March 7, 1971."*

LEGAL OPINION

On the basis of the foregoing facts and of the documents annexed to this opinion which our investigations have established to our satisfaction, and after review of such international authorities as we deemed relevant to establish the legal principles which appear generally accepted as applicable to such facts, as more fully set out below, it is our opinion that:

* A copy of a letter confirming the cable notice is attached to this opinion as Exhibit E.

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1. Dr. Phillips is not and has never been the holder of a valid and legally binding oil concession covering the offshore area of the Sultanate of Oman from Ras al Hadd to Ras Minji.

2. No person would incur legal liability to Dr. Phillips or the Wendell Phillips Oil Company by bidding for an oil concession or similar type of agreement or by carrying out any lawful activity permitted by the Sultanate of Oman within or with respect to the offshore area of the Sultanate of Oman from Ras al Hadd to Ras Minji.

DISCUSSION

I. THE LAW APPLICABLE TO CONCESSION AGREEMENTS.

International legal literature is much concerned at present with the question of what law governs contracts concluded between an individual or a corporation and a state, sometimes called state contracts, and especially those still commonly called "concession agreements", but also referred to as "economic development agreements" or "joint venture agreements". Despite, or perhaps because of, the plethora of thinking on the subject, there is widespread disagreement on the question.* The problem is

* For an extensive survey of views on the subject, see Cattani, Law of Oil Concessions in the Middle East and North Africa, ch. III (1967). See also Barraz, The Legal Status of Oil Concessions, 5 J. of World Trade Law 609 (1971).

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generally believed to be of importance because of the widely accepted notion that a contract cannot exist in a legal vacuum, but must draw its force from some system of law.

It is generally said that the parties to an agreement are free to choose any law to govern their contractual relationship,* and modern oil concession agreements nearly always contain elaborate clauses which define the applicable law, usually calling for the application of principles common to the laws of the parties, with subsidiary application of the general principles of law recognized by civilized nations or even of principles of international law.** Thus, the choice of law problem exists primarily in cases where the concession contains no express agreement on the governing law.

The prevailing view is that an agreement between a private party and a state is not governed by (public) international law (the law of nations), in other words it is not a treaty.***

* Such a professio juris may be express or implied.

** For an analysis of numerous concessions, see Cattani, The Evolution of Oil Concessions in the Middle East and North Africa (1967).

*** Garcia Amador, Second Report to the International Law Commission on International Responsibility, U.N. Doc. No. A/CN.4/106 at p. 36 (1957); cf. Serbian Loans Case, P.C.I.J. ser. A Nos. 20, 21 at p. 41; Anglo-Iranian Oil Company Case, [1952] ICJ Rep. 93, pp. 111-113.

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Under the traditional view, as expressed by the Permanent Court of International Justice in the Serbian Loans Case

"Any contract which is not a contract between States in their capacity as subjects of international law is based on the municipal law of some country. The question as to which this law is forms the subject of that branch of law which is at the present day usually described as private international law or the doctrine of conflicts of laws ..."*

The choice of law rules of "private international law" are, under the prevailing view, part of domestic law and thus may differ from jurisdiction to jurisdiction. These differences in conflicts rules may make generalizations as to the proper law of certain contracts with manifold international elements hazardous without reference to the forum or fori under whose rules the determination is to be made. It can be safely stated, however, that where a contract is concluded in a certain state, is to be performed in that same state, the subject matter of the contract being located in the same state, then the law of that state will, absent countervailing reasons, apply to the relationship between the parties. And if, in addition, one of the parties is the head of that same state, the conclusion of prima facie

* loc. cit. in proceeding footnote.

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applicability of his own law becomes inescapable.

Garcia Amador, Rapporteur on International Responsibility to the International Law Commission of the United Nations, stated:

"Learned opinion and practice are agreed that contracts made between the Government of a State and an alien are governed, so far as their conclusion and performance are concerned, by the municipal law of that State and not by (public) international law, for a private person who enters into a contract with a foreign government ipso facto agrees to be bound by the local law with respect to all the legal consequences which may flow from that contract."*

In the Serbian Loans Case, the World Court held that the borrower state "cannot be presumed to have made the substance of its debt and the validity of the obligations accepted by it in respect thereof subject to any law other than its own."**

Choice of law rules of certain nations may give different weight to the fact that a sovereign is a party to a contract, but there is invariably a presumption of prima facie applicability of the sovereign's law in cases

* Garcia Amador, op. cit., at p. 36.

** Serbian Loans Case, cited supra, at p. 42.

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where he acts in his capacity as such.*

Thus, if one adopted the traditional view of the Serbian Loans Case that the choice must be between municipal laws, the March 7 document would have to be tested for its legal significance under Omani law.

Omani law is the Shari'a, usually referred to as the Islamic or Mahomedan law. There is no special legislation in Oman governing oil or other concessions. The Shari'a is a system of precepts based principally on the Koran and divine revelation, the content of which is not always well defined and moreover varies according to the teachings of the four main schools interpreting Islamic law.** Expert opinions expressed before international arbitral tribunals in cases involving Middle Eastern oil concessions lead invariably to the conclusion that the precepts of the Shari'a contain no body of rules which could be considered governing a concession. Lord Asquith of Bishopstone, in his award in the arbitration between the Sheikh of Abu Dhabi and Petroleum Development

* See generally Batiffol, Traite elementaire de droit international prive ch. II (4th ed. 1967); and for the French rule id. § 585; for the presumption in English conflicts law, see Dicey & Morris, The Conflict of Laws, Rule 17, especially p. 709 (8th ed. 1967).

** See generally Mulla, Principles of Mahomedan Law (15th ed. 1961); Cattani, op. cit. at p. 17 n. * supra, at pp. 55-58.

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(Trucial Coast) Ltd. in 1951, said that "it would be fanciful to suggest" that in Abu Dhabi, where Islamic law governs, there are settled legal principles applicable to the construction of modern commercial instruments.* The Referee in the arbitration between the Ruler of Qatar and International Marine Oil Company, Ltd., Sir Bucknill, adopted the same view on the basis of the expert opinions.** The arbitral award in the dispute between Aramco and the Government of Saudi Arabia, unusual because it recognized the validity of the concession as a contract on the basis of the teachings of the Hanbali school of Moslem law as applied in Saudi Arabia, still could not apply that law because, as Professor Sauser-Hall, the Referee in the case, stated:

"The regime of mining concessions and consequently, also of oil concessions, has remained embryonic in Moslem law and is not the same in the different schools...."***

* In the Matter of Arbitration between Petroleum Development (Trucial Coast) Ltd. and the Sheikh of Abu Dhabi, 1 Int'l & Comp. L.Q. 247, at pp. 250-251 (1952).

** Arbitration between International Marine Oil Company, Ltd. and the Ruler of Qatar, 20 Int'l L. Rep. 534, at pp. 544-545 (1953).

*** Arbitration between Aramco and the Government of Saudi Arabia, 27 Int'l L. Rep. 117, at p. 163 (1963) (application of Moslem law as taught by the school of Hanbal and applied in Saudi Arabia was mandatory as far as "matters within the jurisdiction of Saudi Arabia" were concerned by the terms of the arbitration agreement by which, on February 23, 1955, the parties agreed to settle their dispute).

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The arbitrators in these cases have refused to turn to any other municipal legal system and decided the disputes brought before them on the basis of general principles of law accepted by civilized nations, principles of logic and common sense, or, as Lord Bishopstone put it, "a sort of 'modern law of nature'."

This "internationalization" or "delocalization" of the law applicable to concessions has been urged by many writers of great authority even for situations where the municipal law which would be applicable under the traditional view is a perfectly developed legal system. The applicability of general principles of law would, it is argued, give recognition to the special international character of modern concession agreements, their similarity to international treaties and to the mutuality of obligations assumed by the parties thereunder. As one of the most distinguished proponents of this approach, former president of the International Court of Justice Lord McNair suggested, the application of generally accepted principles of law is particularly appropriate to state contracts where the municipal systems of the parties are very different.*

* McNair, The General Principles of Law Recognized by Civilized Nations, 33 Brit. Y.B. Int'l L. 1 (1957).

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This new body of law has been referred to by other proponents as "transnational law" (Jessup) and "droit commun des nations" (Fouchard), but the term "general principles of law recognized by civilized nations", derived from Article 38 of the Statute of the International Court of Justice where it appears as one of the sources of international law, is most commonly used to describe it.

Accepting this modern view and the international authorities in its support, we propose to examine the question whether the March 7 document can be considered a legally binding instrument under the general principles of law recognized by civilized nations.

II. THE LEGAL NATURE OF THE MARCH 7 DOCUMENT.

It is generally accepted that a contract between two parties gains its force from the will of the parties. In interpreting a contract the aim is thus to find the intention of the parties at the time of their expressions of will.

The same principle, namely that the binding force of a juridical act flows from the intention of the actor, governs the interpretation of unilateral expressions of will, such as offers to contract or unilateral grants

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of privileges by a sovereign.* If the manifestation of will is unqualified and is such that it can reasonably be interpreted to contain all the terms of the proposed contract or all the elements of the privilege granted, it may have binding effect on its author during a time period either specified in the declaration or reasonably determinable under the circumstances. The law recognizes that even in complex commercial arrangements the parties seldom specify every minute detail of the intended arrangement, but a tribunal may supply only such details as can reasonably be inferred to have been in the contemplation of the parties.

The parties' behavior and personality, their previous dealings, the importance of the subject matter and, where a commercial transaction is involved, the customs of the trade, are some of the circumstances universally considered to determine whether a particular manifestation of will expresses an intention to be bound. The same considerations are used in deciding whether the expression may be considered of sufficient specificity to

* It appears that under German and Swiss doctrine, for instance, a concession is considered a unilateral act of state. The United States Supreme Court stated that "contracts between a nation and individuals are only binding on the conscience of the sovereign, and have no pretensions to a compulsive force." Principality of Monaco v. Mississippi, 292 U.S. 313, at p. 325 (1934) (dictum). However, the consensus of international authorities is that a concession is a contract sui generis.

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be legally enforceable. A tribunal interprets the act on the basis of objective criteria and may not substitute its will to that of the actor.*

Where a written form is present, it will be given paramount importance and will be considered as a whole. Technical rules of municipal law of evidence in many systems restrict the inquiry to the four corners of the written text. But such rules are not of universal application and international tribunals often do consider evidence of the parties' negotiations and acts both prior and subsequent to the date of the written document in seeking to determine the parties' intention as expressed in a written instrument.

The March 7 document over the signature of H.M. Sultan Qaboos bin Said contains the words "We are pleased to grant you an Oil Concession." But these words are qualified, in the very same sentence, by a reservation of power to reject "arrangements" proposed pursuant to the document. A period of four months from April 1, 1971 is

* These principles prevail in both the civil and the common law systems. See, Planiol & Ripert, 6 Traite pratique de droit civil francais, pp. 19-49 (2d ed. 1952) (French law); Friedmann, Law in a Changing Society, pp. 92-94 (1959) (English law); Raiser, Vertrags-freiheit Heute, 13 Juristenzeitung 1 (1958) (German law). According to the award in the Aramco Case, discussed on p. 22, supra, similar principles apply in the Shari'a.

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stated in the document as the time during which proposed arrangements may be submitted.

The reasonable construction of these words is that His Majesty expressed his willingness to consider terms for an oil concession covering the area described in the document if such terms were submitted by Dr. Phillips during the allotted period, i.e. before August 1, 1971. The claim that this one-page document in itself constitutes an oil concession grant is not only directly contradicted by the very terms of the writing, but is negated also by the general principles of law as amplified by the customs prevailing in the oil industry in the Middle East.

As Lord McNair stated, "the days when a clever and adventurous prospector could interview an inexperienced tribal chieftain and then return home with a valuable 'concession' in his pocket have gone."* Modern concession agreements are among the most elaborate and complex legal documents, carefully negotiated, containing all the basic terms which are to govern what is expected to be a fruitful cooperative relationship over a long period of time.

* McNair, op. cit., at p. 2.

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Nor is this document an "offer" in the legal sense of that term, and the reference to it as such in the cable sent to Dr. Phillips on September 12, 1971 is not conclusive as to the legal significance of this document. An "offer" in generally accepted legal terminology is a juristic act, a declaration which sets out all the necessary elements of an intended legal relationship in sufficient detail to be subject only to the other party's acceptance for its legal effectiveness. The March 7 document would be qualified by jurists as an "invitation of an offer." A legally sufficient offer submitted in accordance with such an invitation would be, in turn, subject to acceptance in order to create a contractual relationship between the parties.

Even if both parties had believed that the March 7 document was a "concession," this belief would not have operated, under general principles of law, to turn an arrangement utterly lacking in definiteness into a binding contract.

Assuming that under generally recognized principles of law any legal effect is to be attached to the March 7 document, which is very doubtful, such effect would certainly not go beyond an obligation to bargain in good faith if a reasonable offer is made pursuant to the invitation.

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III. THE SIGNIFICANCE OF PRIOR AND SUBSEQUENT DEALINGS.

The conclusion stated above as to the legal nature of the March 7 document is corroborated by the conduct of the parties both prior and subsequent to the date of that document.

During the month of February, the parties reached a verbal understanding that Dr. Phillips would be permitted to make a proposal for a concession and that a signature bonus of \$1 million would be payable. The March 7 document confirmed this understanding and gave the exact description of the area to be covered by the proposals to be submitted prior to August 1, 1971. Dr. Phillips was advised that proposals would have to be submitted within four months from April 1, 1971 by the telegram which was sent to him on March 9, 1971.

During the telephone conversation with Mr. Aldous on March 18 or 19, Dr. Phillips agreed that proposals would be submitted on July 23, His Majesty's birthday. The signature bonus was alluded to during this conversation and was also reflected in documents containing certain proposed terms to be included in the future agreement.

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Specific items to be included in the proposals were discussed between Mr. Aldous and Mr. Danker both in person and by correspondence.

During an audience with His Majesty in July, Dr. Phillips offered to come to Oman in person for the signature of the agreement and to make the \$1 million signature bonus payment personally. The offer was accepted by His Majesty. No proposal was made, however, and no amount was tendered by Dr. Phillips or anyone in his behalf either by July 23 or by August 1, 1971, in Oman or elsewhere.

Mr. Danker presented a draft of the concession agreement in Oman at the beginning of August and indicated to His Majesty that no immediate payment of the signature bonus could be made. The draft agreement was not signed and His Majesty stated that he would give Dr. Phillips until the end of August to present the definitive copy of the agreement and to make the payment of the signature bonus in person.

On August 31 Dr. Phillips was reminded of his original promise to present an acceptable agreement and make payment by July 23. He thereupon requested a visa, referring to the sickness of a friend in explanation of the delay. Visa authority was sent by cable on September

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6. Finally, on September 12, 1971, the cable was sent out advising Dr. Phillips that because of extended delays His Majesty "has cancelled offer to you of offshore oil concessions."

The contemplated oil concession agreement has never been signed by the parties, thus there can be no question of a breach of contract.*

Under the principle of good faith, certain legal systems evolved the notion of "precontractual liability" (culpa in contrahendo) for extreme cases where the general principle of arm's length dealing during contractual negotiations would lead to unconscionable results. One comprehensive study of the civil and common law systems to establish the existence of precontractual duties found, "broadly speaking," that the law would protect an innocent party against an abuse of the privilege to break off negotiations where the negotiations were conducted "in pursuance of a scheme never to come to terms."** In view of the bona

* We note that the printed form of the concession agreement, which has not been signed, contains the following paragraph: "31.1 This Agreement shall come into force and effect as a contract when signed by the Parties."

** Kessler & Fine, Culpa in Contrahendo, Bargaining in Good Faith, and Freedom of Contract: A Comparative Study, 77 Harv. L. Rev. 401, p. 419 (1964).

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fide negotiations conducted by the Sultanate of Oman, we need not agree or disagree. Notions of good faith may be dangerous when used indiscriminately. They may be utterly inappropriate when their use would be against the fundamental legal and moral principle of responsibility for one's own action.

There was during the period from February to September a precontractual relationship of mutual confidence and trust between His Majesty and Dr. Phillips. It was certainly incumbent upon the latter to maintain this relationship and show that he could be relied upon to discharge the heavy responsibilities which he was expected to accept to the mutual advantage of himself and the Sultanate under the contemplated long-term agreement. When, through his own neglect and lack of diligence, Dr. Phillips destroyed this relationship, His Majesty was legally justified not to put an important resource of his country into potentially unreliable hands.

IV. EXAMINATION OF THE THREAT BY DR. PHILLIPS
AGAINST THIRD PARTIES IN THE LIGHT OF PRECEDENTS.

In the previous sections of this discussion, we have found that under general principles of law

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recognized by civilized nations there is no legal basis for Dr. Phillips' assertion that he had been granted a valid oil concession covering the offshore areas of the Sultanate of Oman from Ras al Hadd to Ras Minji. Because of the published threats to institute legal action against any person endangering Dr. Phillips' "concession", we shall, however, review some of the considerations and judicial decisions which further demonstrate the lack of legal basis for any such action.

Any legal claim would, of course, have to be presented before some municipal court, i.e. domestic court of some country. There is no international tribunal for the compulsory adjudication of private claims. Dr. Phillips would have to establish his claim under the procedural rules applicable in the particular jurisdiction. In this general examination, the procedural difficulties will be disregarded, even though they would be of great practical importance in a given case. It is thus assumed that the particular court has jurisdiction and that all information presented to it by Dr. Phillips may be considered as valid proof.

As plaintiff, Dr. Phillips would have to establish to the court's satisfaction that he has some legally pro-

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tected interest which is being unlawfully infringed by the third party. The claim itself would, of course, present an indirect challenge to His Majesty's right to grant a concession to the third party and would ask the court to determine the legal effect of dealings between the Sultanate of Oman and Dr. Phillips.

The so-called "act of state" doctrine would prevent any court in the United States from considering such a claim. The United States Supreme Court has stated the doctrine in Underhill v. Hernandez as follows:

"Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory."*

The doctrine has been strictly and consistently applied in a long line of cases and holds true whether the foreign government is sued directly or whether its actions are challenged collaterally in litigation between private citizens. In Oetjen v. Central Leather Co., the High Court ruled:

* 168 U.S. 250, p. 252 (1897).

"The principle that the conduct of one independent government cannot be successfully questioned in the courts of another is as applicable to a case involving the title to property brought within the custody of a court, such as we have here, as it was held to be to the cases cited, in which claims for damages were based upon acts done in a foreign country; for it rests at last upon the highest considerations of international comity and expediency. To permit the validity of the acts of one sovereign state to be re-examined and perhaps condemned by the courts of another would very certainly 'imperil the amicable relations between governments and vex the peace of nations'."*

The act of state doctrine has been reaffirmed in 1964 by the Supreme Court in the famous Sabbatino case, in which the Court held that it could not explore the validity of acts of expropriation by the government of Fidel Castro "even if the complaint alleges that the taking violates customary international law."**

Since the decision in Sabbatino, the United States Congress has adopted an amendment to the Foreign Assistance Act of 1964 (sometimes called the "Hickenlooper" or "Sabbatino" amendment)*** which introduced a limited

* 246 U.S. 297, pp. 303-304 (1918).

** 376 U.S. 398, p. 428 (1964); see 58 Am. J. Int'l L. 779 (1964).

*** 22 U.S.C. § 2370(e)(2), as amended.

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exception to the act of state doctrine. The amendment requires the courts, in the absence of a suggestion to the contrary by the President, to rule on the merits of a case where title to property is asserted based upon a confiscation by an act of state in violation of the principles of international law. The very wording of the amendment shows that it applies only to expropriation of property rights in violation of international law and not to contract claims, as pointed out by the highest court of the State of New York in a recent case.* In order to overcome the "act of state" defense in cases involving title to expropriated property, the court ruled that plaintiff would have the burden to show not only that the action complained of was a taking of property but also that it violated the principles of international law.

The distinction between violation of contract and taking of property may be blurred in the usual controversy involving a concession, because the dispute arises only after the concessionaire had made heavy investments in the host country over a long period of time, had erected installations and structures there, and thus set up a "going concern" which may easily qualify

* French v. Banco Nacional de Cuba, 23 N.Y.2d 46, pp. 61-62 (1968).

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as "property". Dr. Phillips' claim, however, is unusually clearly based on an alleged breach of contract. He has not invested any property in his claimed "concession", other than the sums and effort expended in preparing the draft of the proposal for the contemplated agreement, negotiating proposals, and apparently unsuccessfully attempting to arrange financing for the signature bonus. He has not brought any property into Oman which could be subject to expropriation or confiscation. The March 7 document cannot be interpreted as having given him a property right in the oil that may lie in the area described therein.

The fact that the September 12 telegram did not "take" any property or property right from Dr. Phillips would make the Sabbatino amendment inapplicable, thus requiring any American court to dismiss an action under the act of state doctrine.

A very recent case* in which one American oil company accused another of conspiracy to deprive it of the richest area of its offshore oil concessions granted to it by the Trucial States Umm al Qaywayn and Ajman, illustrates

* Occidental Petroleum Corp. v. Buttes Gas & Oil Co., 331 Fed. Supp. 92 (D.C. Calif. 1971). We understand that notice of appeal against the decision has been filed.

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the continuing vitality of the act of state doctrine. In its complaint, Occidental Petroleum Corporation alleged a conspiracy between Buttes Gas & Oil Co., the Trucial State Sharjah, Great Britain, Iran and others in violation of the antitrust laws. The latter states, of course, were not named as defendants in the case, obviously in recognition of their sovereign immunity.

The parties were holders of offshore oil concessions granted by three neighboring sheikdoms, Umm al Qaywayn, Ajman and Sharjah. Briefly stated, the gravamen of the complaint was that after plaintiffs' geophysical tests had indicated the presence of oil at a point about 9 miles offshore from the island of Abu Musa, claimed by Sharjah, defendants induced the Ruler of Sharjah to extend its claimed territorial waters from three to twelve miles seaward, thereby creating an overlap in the concessions. The ensuing boundary dispute between the three Trucial States was further complicated when defendants allegedly "induced and procured" the National Iranian Oil Company to claim Iranian sovereignty over Abu Musa and waters twelve miles seaward therefrom. According to the complaint, Buttes also "induced and procured" the British Foreign Office to prevent Occidental from drilling

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in the disputed area in the exercise of its then existing treaty powers over the Trucial States. The U.S. District Court for the Central District of California dismissed the action before any evidence was presented, holding that the act of state doctrine bars a claim for injury flowing from foreign sovereign acts allegedly induced and procured by the defendants.

The doctrine that the sovereign act of a state will not be examined in the courts of another appears to have been recognized in the common law of England as early as 1674 in the case of Blad v. Bamfield.*

The doctrine was firmly adopted by the English Court of Appeal in the famous case of Luther v. Sagor.** The plaintiff in Luther claimed ownership of certain timbers which had been expropriated without compensation by the nascent Soviet authorities shortly after the revolution of 1917 and then sold by them to the defendant, who imported the timbers into England. Citing the cases decided by the United States Supreme Court, the Court of Appeal dismissed the original owner's

* 3 Swan. 604 (Ch. 1674) The Lord Chancellor enjoined an action between private parties questioning the seizure of British property by Denmark.

** [1921] 3 K.B. 532 (C.A.).

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claim on the ground that the acts of the executive of a foreign state de jure or de facto recognized by the British government will not be questioned in a British court. In another case involving property confiscated by the Soviet government and later sold in England, the same result was reached, Lord Justice Scrutton stating:

"Our Government has recognized the present Russian Government ... and our Courts are bound to give effect to the laws and acts of that Government so far as they relate to property within that jurisdiction ..."*

The doctrine has not been as rigidly applied in England as in the United States, however, as is exemplified by the famous case of The Rose Mary** The Anglo-Iranian Oil Company, a British corporation, had been granted an oil concession by Persia in 1933. The concession was granted for a period of 66 years and, according to its express terms, could not be withdrawn or annulled by Persia nor could its terms be altered. There was also a choice-of-law provision excluding the application of Persian law and subjecting the concession to international law, including the

* Princess Paley Olga v. Weisz, [1929] 1 K.B. 718, p. 725 (C.A.).

** Anglo-Iranian Oil Co. v. Jaffrate (The Rose Mary), [1953] 1 W.L.R. 246 (Supreme Court of Aden), [1953] Int'l L. Rep. 316, 47 Am. J. Int'l L. 325 (1953).

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general principles of law recognized by civilized nations, and a provision for the settlement of disputes by way of arbitration. In 1951, after the concession had been in operation for 18 years, Iran enacted a law nationalizing the oil industry, dispossessed the Anglo-Iranian Oil Company and annulled the concession. These acts were not only a breach of the terms of the concession, but the law was arguably discriminatory because it applied only to the Anglo-Iranian Oil Company, which was the only oil company in Iran. The defendant in The Rose Mary was an Italian company which had purchased oil in Iran in 1952. While the oil was being transported to Italy, a British warplane forced the ship, The Rose Mary, into the then British protectorate of Aden, where the plaintiff sued to recover the oil. In giving judgment for the plaintiff company, Campbell J. adopted the view that the provisions of the Iranian nationalization law relating to compensation* were inadequate and that "expropriation has taken place without any compensation and that is confiscation." Then Campbell J. announced the general principle that (1) all confiscatory legislation is

* The law allowed the Iranian government, but did not require it, to deposit up to 25% of the net profits after expenses in a Iranian bank "in order to meet the probable claims of the Company."

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contrary to international law, (2) that such law is incorporated in the domestic law of Aden and (3) that the effect of such legislation would not be recognized in Aden. The Court of Appeal cases cited above, in which effect was given to the confiscatory decrees of the Soviet government on the basis of the act of state doctrine, were distinguished by Campbell J. because in those cases the property confiscated belonged to subjects of the confiscating state and thus did not involve international law.*

The decision in The Rose Mary has been both acclaimed and criticized by commentators. It has not been followed by the courts of Italy** and Japan*** where the Anglo-Iranian Oil Company has unsuccessfully attempted to claim ownership of oil extracted from the concession area, sold by Iran and imported into those countries.

* The defendants have filed a notice of appeal, but the case was settled before appellate decision.

** Anglo-Iranian Oil Co. v. S.U.P.O.R., [1955] Int'l L. Rep. 19, 47 Am. J. Int'l L. 509 (1953) (Civil Court of Venice 1953); Anglo-Iranian Oil Co. v. S.U.P.O.R., [1955] Int'l L. Rep. 23, 1958 Rev. Crit. de Dr. Int. Prive 519 (with note by De Nova), 49 Am. J. Int'l L. 259 (Civil Court of Rome 1954). These opinions will be further discussed below.

*** Anglo-Iranian Oil Co. v. Idemitsu Kosan Kabushiki Kaisha, [1953] Int'l L. Rep. 305 (Tokyo District Court), affirmed on appeal, [1953] Int'l L. Rep. 312 (Tokyo High Court).

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The sweeping generalization of The Rose Mary has been more recently criticized in In re Helbert Wagg & Co., Ltd.,* in which Upjohn J. demonstrated that The Rose Mary did not correctly state the limits of the act of state doctrine under English law. Upjohn J. pointed out that no distinction is to be made between the confiscation of the property of a national of the confiscating state and of a foreigner. The validity of foreign legislation will not be questioned except where it is penal in character, discriminatory or directed against the property of only one person. After reviewing the precedents, including The Rose Mary, Upjohn J. concluded:

"In my judgment the true limits of the principle that the courts of this country will afford recognition to legislation of foreign States in so far as it affects title to movables in that State at the time of legislation or contracts governed by the law of that State rests [sic] in considerations of international law, or in the scarcely less difficult considerations of public policy as understood in these courts. Ultimately I believe the latter is the governing consideration. But, whatever be the true view, the authorities I have reviewed do show that these courts have not on either ground recognized any principle that confiscation without adequate compensation is per se a

* [1956] 1 Ch. 323.

ground for refusing recognition to foreign legislation.**

It has been noted that there is apparently no English precedent which would have involved a sovereign executive act as opposed to legislation. Thus Dicey's Digest sums up the English rule as follows:

"... English courts have no jurisdiction to entertain a claim in respect of executive acts authorised or ratified by a foreign government recognised de facto or de iure by Her Majesty's Government in the United Kingdom and committed within the territory of that government."**

We do not see how Dr. Phillips could overcome the jurisdictional hurdle of the act of state doctrine against a third party before an English court. His Majesty did not confiscate any property, in violation of international law or otherwise.*** He did hold an alien to his own word and

* [1956] 1 Ch. at p. 349.

** Dicey & Morris, The Conflict of Laws, Comment to Rule 21, p. 165 (8th ed. 1967) (in Dicey's view the rule is based on dicta).

*** Even in cases of expropriation of property the rule of international law is subject to different interpretations as to its meaning and effects. Authorities are divided whether the non-performance of a contract by a state can be said to violate international law. See Friedman, Expropriation in International Law (1956), especially p. 156; Seidl-Hohenveldern, Internationales Konfiskations-und Enteignungsrecht (1952); Jennings, State Contracts in International Law, 37 Brit. Y.B. Int'l L. 156 (1961); Garcia-Amador, op. cit. supra p. 18, at pp. 34-35; Amerasinghe, State Breaches of Contracts with Aliens and International Law, 58 Am. J. Int'l L. 881 (1964).

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terminated negotiations when that alien had lost His Majesty's confidence because of extended delays and apparent inability to perform promises made during the period of negotiations. We do not think that this result is against the public policy of any nation.

We do not hold ourselves out as experts on English law, but in view of our conclusion that no valid contract can be said to have ever existed between His Majesty or the Sultanate of Oman and Dr. Phillips, it would seem to us that even if the English courts were allowed to consider the merits of a claim by Dr. Phillips, there would be no basis for holding the third party in any way liable. Dr. Phillips simply could not establish the existence of any legally protected interest which the law would require the third party to respect. No good-faith allegation of a property right could be made by Dr. Phillips to any oil that might be extracted from the offshore area described in the March 7 document. For any claim of tortious invasion by the third party of a contractual interest, it would appear that under English authorities Dr. Phillips would have to show (1) the existence of a valid and enforceable contract (2) that the defendant had knowledge of the existence of such contract, but, nevertheless, (3) without

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justification, (4) intentionally interfered with the contractual relationship, which resulted in a (5) breach.* No such showing could be made.

The act of state doctrine is not as well formulated in civil law countries as it is in the United States and England. But, by the use of principles of conflict of laws, international law and notions of territorial sovereignty, very similar results have been reached in such jurisdictions as have been confronted with a challenge to the validity of the sovereign act of a foreign power. We will examine some decisions of such courts.

As stated earlier, the Anglo-Iranian Oil Company sued before the Italian courts to establish its ownership rights in oil which had been imported from its properties nationalized by the Iranian government.** The Civil Tribunal of Venice rejected the notion that it had no power

* See Clerk & Lindsell on Torts, para. 632 (12th ed. 1961); Street, The Law of Torts, pp. 342-353 (3d ed. 1963) and authorities cited therein. We believe that the law of the country where the alleged tortious interference with Dr. Phillips' "rights" had occurred (lex loci delicti) would apply if the court were not prohibited from ruling on the merits by the act of state doctrine. The law to be applied by English courts to torts committed outside of England is, however, nearly impossible to determine in the wake of Boys v. Chaplin, [1969] 2 All. E.R. 1085 (House of Lords).

** Cases cited p. 42 n.** supra.

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to question the Iranian laws, but found that the defendant company had good title as a result of the purchase in Iran from an Iranian government agency whose ownership was valid under Iranian law. Anglo-Iranian argued that even if the nationalization was valid in Iran, it should not be given effect in Italy because its uncompensated nature was against the public policy (ordine pubblico) of Italy.* Disposing of this point, the court said in part:

"In this case the oil in controversy was taken in Iran by the Iranian State in carrying out the nationalization law, and was disposed of by the latter in Iran to defendant pursuant to a contract of sale - all this in conformity with the legal order of Iran, within whose territory these acts (expropriation and sale) occurred and produced their legal and material effects."**

A year later the Civil Court of Rome was asked to rule on Anglo-Iranian's claim to oil extracted from

* Article 31 of the preliminary provisions of the Italian Civil Code contains the familiar choice of law principle that laws and acts of a foreign state shall have no effect in Italy when contrary to public policy.

** 47 Am. J. Int'l L. 509, pp. 509-510 (1953).

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the concession area in Iran and under that court's jurisdiction. The claim was again rejected,* one of the several grounds relied upon by the court being that the plaintiff's claim depended on the assumption that the rights granted by the concession of 1933 carried with it the title to oil extracted by anybody within the area of the concession. The court interpreted the 1933 concession as giving title only to the oil extracted by the concessionaire, and applied, as a procedural law of the forum, the Italian presumption of title in favor of the person in possession. Again, the public policy argument was rejected and the court ruled, as had the Civil Court of Venice, that the Iranian nationalization law was not violative of international law, since it did contain the principle of compensation. The court added, however, that even if the Iranian law had not been applicable because of lack of compensation, discrimination, or by reason of public policy, the plaintiff's

* Anglo-Iranian Oil Co. v. S.U.P.O.R., [1955] Int'l L. Rep. 23, 1958 Rev. Critique de Dr. Int. Prive, 519 (with note by De Nova), 49 Am. J. Int'l L. 259 (Civil Court of Rome 1954).

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claim would have had to be rejected because it did not sustain its burden to prove ownership of the oil under its concession and Iranian law.

Similarly, the courts of Austria,* Belgium,** France,** Japan,*** Germany***** and the Netherlands*****

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- * E.g. Supreme Court in Civil Matters of Austria, Oct. 13, 1922 (Ob. I, 1055/22) (legality of confiscation by the Hungarian government in Hungary may not be questioned in Austrian courts).
- ** E.g. Propetrol v. Compania Mexicana de Petroleo, Civ. trib. of Antwerp, Feb. 21, 1939, [1939] Belgique Judiciaire II, p. 12, [1938-1940] Ann. Dig. 25 (No. 11) (involving expropriated Mexican oil).
- *** E.g. Societe Hardmuth, Court of Appeal Paris, Dec. 2, 1950, 44 Rev. Critique de Dr. Int. Prive 501 (1955) (nationalization by Czechoslovakia will not be questioned insofar as property located there at the time of nationalization is concerned); Keller v. Maison de la Pensee Francaise, Trib. de la Seine, July 12, 1954, [1954] Intl' L. Rep. 21, 49 Am. J. Int'l L. 585 (1955) (court will not rule on the legality of the taking of property in the Soviet Union by its government).
- **** Cases cited p. 42, n.*** supra.
- ***** E.g. Prince Dabisita-Kotromaniez v. Societe Lepke, Trib. of Berlin, Nov. 1, 1928, 56 Clunet 184 (1929) (refused to rule on legality of taking of property in the Soviet Union by the Soviets).
- ***** E.g. Mexico v. Batsafsche Petroleum Maatschappij, District Court of Middleburg, Aug. 2, 1938, [1938] Ned. Jur. No. 790, [1919-1942 Supp.] Ann. Dig. 16 (No. 7) (involving Mexican oil expropriated by the Mexican government).

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have refused, as a matter of domestic law, to challenge acts of taking of property situate on the territory of an expropriating foreign state. The line of cases is not consistent, however, since the determination is usually made on the basis of public policy, as a matter of conflict of laws. Thus when the act is particularly repugnant to the country, such as the discriminatory taking of the property of Sudeten-Germans was to Germany* or the expropriation of Dutch-owned tobacco plantations in Indonesia was to the Netherlands,** their courts refused to recognize the validity of those measures.

Two cases involving tobacco from plantations expropriated by Indonesia are particularly instructive. It had been quite well established in the Netherlands that the acts of foreign governments affecting title to property under their territorial jurisdiction will

* Sudeten Germans Case, Amtsgericht Dingolfing [1948] Ann. Dig. 24, p. 25 (No. 12).

** Dutch Tobacco Case, Court of Appeal (Hof) of Amsterdam June 4, 1959; Nederlandsche Jurisprudentie No. 350, p. 855 (1959); outline in Domke, Indonesian Nationalization Measures before Foreign Courts, 54 Am. J. Int'l L. 305 (1960).

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be given effect in Dutch courts. When Indonesia expropriated tobacco plantations of Dutchmen, the Court of Appeal of Amsterdam recognized that the propriety of expropriation measures of foreign governments usually will not be examined in the courts of the Netherlands, but found that the Indonesian measures must be disregarded because they represented a "manifest and serious" violation of international law.* The expropriation was viewed as a grave disregard of the minimum international standard because it was, in the court's view, not only without any compensation and discriminatory, but also unjustified by Indonesian public interest and used only as a means of political pressure in the dispute over New Guinea. Thus the court found that giving effect to the Indonesian measure would have been against the Dutch public order. But "public order" is a flexible term. Former owners of the expropriated plantations also sued in Germany, claiming title to tobacco imported from Indonesia. The argument was the same, namely that the purported expropriation without compensation and in a discriminatory manner was a

* Dutch Tobacco Case, preceding n.

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retaliation, contrary to international law and should not be recognized as transferring valid title. The German court viewed The Rose Mary as the only case fully supporting the plaintiff's view and declared itself unconvinced that there was a general rule of international law which requires local courts to disregard foreign decrees which take property in violation of international law.* As a matter of German public order, the court did not find the expropriation to be so "shocking" or "unbearable" as to violate German public policy.

In the court's view the Indonesian measures, whether in violation of international law or not, were not contra bonos mores under German law.**

* Bremer Tobacco Case, OLG (High Court) of Bremen, Aug. 21, 1959; fully reported in 9 Archiv des Volkerrechts 318-363 (1961), excerpts in Domke, op. cit. supra.

** Article 30 of the German Civil Code provides: "The foreign law shall not be applied if its application would be contra bonos mores, or contrary to the object ... of a German law." (free translation)

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Review of Continental cases shows that the civil law courts are often willing to take jurisdiction in disputes collaterally challenging the validity of foreign governmental acts. But in cases where that government acted in its sovereign capacity (iure imperii), as opposed to mere acts of commerce (iure gestionis), the courts have refused to recognize the effects of such governmental acts only in the most extreme and exceptional cases. The principle of permanent sovereignty over natural resources, reaffirmed in 1962 by the General Assembly of the United Nations,* would not be easily disregarded.

Liability of a third party for alleged interference with contractual rights committed within the territory of a civil-law country** would appear pre-

* Resolution adopted on Dec. 14, 1962, U.N. Gen. Ass. Off. Records, 17th Session, Suppl. No. 17 (U.N. Doc. A/5217). See generally Mughraby, Permanent Sovereignty over Oil Resources (1966).

** The claim would be for a tort and the law of the place where the alleged acts of interference occurred (lex loci delicti) would in principle govern the question of liability. All Continental European countries, with the possible exception of Norway, follow the lex loci delicti principle. See Dutoit, Memorandum relatif aux acts illicites en droit international prive, in 3 Actes et documents de la Onzieme session de la Conference de la Haye de droit international prive, p. 9 and p. 47 (1970).

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cluded by virtue of the firmly established notion in the civil law systems that a contract, even if shown by plaintiff to be valid and binding, creates a legal relationship only between the parties, it gives only "relative" rights. By virtue of the old maxim res inter alios acta, contractual relations, as opposed to property rights, are thought incapable of invasion by third parties who are not bound to respect their terms.*

The exercise of the freedom of contract could be considered a tortious act only in exceptional cases of abus de droit (abuse of rights) under the civil codes or civil-law jurisprudence. Thus under article 226 of the German Civil Code "the exercise of a right is not lawful if it can have no purpose other than causing a damage to another person." Article 2, para. 2 of the Swiss Civil Code requires that the abus de droit be "manifest". In French law abus de droit is used only to attach responsibility to acts which constitute the use of a

* See, e.g., Oftinger, 1 Schweizerisches Haftpflichtrecht, p. 115 (2d ed. 1958) (Swiss law); Mazeaud, 1 Traite theorique et pratique de la responsabilite civile, § 144 (5th ed. 1957) (French law); Lorenz, 2 Lehrbuch des Schuldrechts, p. 409 (7th ed. 1965) (German law).

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right without any legitimate interest and in utter disregard of the interests of others.* The Swiss Federal Tribunal (Supreme Court) stated that interference with a contract may be unlawful only in especially grave circumstances, where in the light of the purpose of the actor or of the means employed the act appears intentional and contra bonos mores.** Under German law the same showing of especially grave fault (i.e. an act contra bonos mores) would be required.*** The principle of res inter alios acta is also paramount in French law; under French decisions only the employer-employee relationship appears to have gained some legal protection in cases where a competitor entices away employees of another.****

* Mazeaud, op. cit., § 92.

** BGE (Swiss Federal Tribunal) vol. 52 II p. 370. The opinion excluded the existence of a tort on theoretical grounds: since the breach of contract is not a tort, its instigation cannot be tortious. Id. at p. 376.

*** Lorenz, op. cit., pp. 402-403.

**** Mazeaud, op. cit., § 144.

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We have not conducted an exhaustive survey of civil-law sources because a general examination has satisfied us that a tort claim by Dr. Phillips against a third party for interference with his "concession" would receive even less sympathetic reception in civil law courts than it would under the common law.

Respectfully,

Thomas W. Hill, Jr.

CRAVE & CO

Exhibit A

DR. WENDELL PHILLIPS

TRANSCRIPT OF A PRESS CONFERENCE HELD AT
GROSVENOR HOUSE HOTEL, LONDON, on Friday, 27th
September, 1971.

EXACT TRANSCRIPT OF A PRESS CONFERENCE HELD
AT GROSVENOR HOUSE HOTEL, LONDON, on Friday,
17th September, 1971.

Gentlemen, forgive me for not standing please, but I have been a little ill and I am doing the best I can. It is a long way from Guam Manilla, Singapore and then Singapore/Bombay to London in four days that is a long trip for anybody and I had been somewhat laid up in hospital for a few days before hand.

Now, very briefly, my main reason for wanting to meet with you this morning, and we are taring this because we are going to send the tape to His Majesty Sultan Qaboos bin Said, the Sultan of Oman, so that His Majesty will understand exactly what our feelings are and what our concern is over recent developments which have transpired in his country; and I must add right from the beginning that I have been intimately associated, as you probably all know, for the last twenty-two years of my life with the Sultan of Oman.

I have written two major books on the Sultan of Oman, and I have a book in press right now, and my first book was partly on Oman and partly on the other parts of Arabia, so I really have three books and half of another book devoted exclusively to Oman, as well as numerous archeological publications, volumes and the rest, and of course we have the finest archeological collections and exhibits in the world from Oman, which we are studying and preparing for exhibit and for scientific and scholarly publication.

I have been associated, not only with the present

Sultan since he was a nine year old boy, but with his father who has reigned for thirty-two years, Sultan Said bin Taimur, and with the grandfather, Sultan Taimur bin Feisal, and the last dying wish of the grandfather, who had never met his grandson who is now Sultan Qaboos bin Said, was that I give what guidance and direction and friendship and affection I had to the young Sultan when he became Sultan, and to help him in every way possible, and when Sultan Taimur died a few years ago at Greens Hotel next to the Taj Mahal Hotel in Bombay, I was with him just before he died and I gave him my word that I would assist his grandson that he had never met, and of course I have been an intimate friend of the present Sultan. I believe I can claim credit for having taught him the first few words of English; he now speaks English brilliantly. I certainly taught him how to shoot, and we have spent many, many, many, many hours and days together in Salalah in Dhofar, which is where he spent the portion of his life that he was in Oman; the rest of his life he was educated in England.

He made a trip around the world some years ago - I entertained him at my home in Honolulu - my mother entertained him at her home in California - one of my close associates, the famous Republican leader Sam Pryor entertained him in New York, and we did our best to make his trip around the world as enjoyable and educational as possible.

Now, recently certain events have transpired in the Sultan's country which are extremely confusing, not only I am sure to you ladies and gentlemen, but equally confusing to me, and I am particularly concerned right at the moment as to the welfare

of the Sultan. I am not even sure that the Sultan is alive; I don't know whether he is alive or dead, because I have just been in Singapore. I have sent many cables to the Sultan - copies are available for you to examine. No reply was received from the Sultan, and I believe in noting the contents of these cables you will see that they are cables from one old friend to another old friend, and Arabs have many faults, just like other people, but they are the most hospitable people in the world, and they are very gracious and they are very polite, and to not reply to the cables of one who has been Economic Adviser and representative of his father for twenty years, an intimate friend of his grandfather, and with his grandfather when he dies, and who has been a close friend of the present Sultan from the age of nine up to his present age, which is now about thirty, is something unspeakable in the Arab world; this just does not happen.

Now to elaborate a little bit my concern, when the Sultan took over a year or so ago as Sultan he made an initial series of moves in his country which were extremely brilliant, and every effort that I have seen from the Sultan has been one of selflessness to his people. In other words he has given his whole life, all of his energies, to raising the standard of living in the country, to help with the standard of sanitation, medical care and education in the country, and I have spent almost my entire adult life in and out of the Arab world in one phase or another and I know the good points of the Arab world and I know the bad points of the Arab world, but this young Sultan is certainly from all efforts that we have seen doing the best he can to further his country, to help his country enter the new world of the Twentieth Century and to bring in

the best that the Western world has to offer.

Now, as you know Oman has a long history - I have copies of my books here for you to examine. I won't say my books are the best books on Oman; they are just about the only books on Oman. That is about the only qualifying statement that I can make. They were carefully researched, carefully studied; I had unlimited access to the archives of Oman, to interviewing the main personalities in Oman, and of course to three successive rulers of the Abu Said Dynasty, Sultan Taimur, Sultan Said and Sultan Qaboos. No other person has had this access that was made available to me, and being an ex war correspondent and newspaper man I know the problems that you are faced with in writing, and believe me I did my best to write a comprehensive study and survey of the country.

Now the one country that has been most intimately associated with Oman for the past two hundred years is the United Kingdom, and there have been more famous Englishmen associated with the rulers of Oman and the development of Oman than any other single ethnic group. And England has been greatly responsible for the security of Oman, for much of the worthwhile developments in Oman and for wisely guiding a long succession of Abu Said rulers (that's ALBU), that is the dynasty name of the present Sultan, and I could probably by memory tell you the histories of some thirteen Abu Said dynasties if you had time to listen and I had energy enough to tell you. I won't bore you with that, but the fact that I do know it is portrayed in my book, although I am one of those authors that never reads his own books after they come out, because I am so sick of them by that time that I never want to read them myself. I do hope other people don't share that view.

Now my concern over the welfare of the Sultan and of the advice and guidance that he may be receiving is the fact that back in 1965 a certain area of offshore in South Arabia was made available by the former Sultan Said. For various economic reasons we delayed in the development of this area, with the Sultan's approval, and then Sultan Qaboos ascended the throne, and you will note that in the last chapter of my Appendix in Oil in the book "UNKNOWN OMAN" in 1965 I mentioned that Sultan Said had given me this area, and it is stated there in black and white, and it was published here in England by Longmans and it is for you all to see. Now this area was never taken away from me, but the area was regiven to me by the new Sultan, Sultan Qaboos, which is only right because the new Sultan has absolute authority and he is the ruler of the country, and those who are working in the country owe allegiance to the new Sultan, and I am no exception in that regard. Now the new Sultan presented me with this area, which you see on the maps here and it is marked "WENDELL PHILLIPS CONCESSION" along that area there and you will see it marked along the area here, and we were given four months period of time to work out the details of the Concession, that is various production bonuses to be paid, work programmes, and the rest which is standing operating procedure and it is basically a standard OPEC Concession which is typical of the Middle East Arab world today, 55% for Oman and a 12 $\frac{1}{2}$ % Royalty for Oman; it is a standard OPEC type of concession, but every concession in the world is slightly different from every other concession due to the aspects of the country and to the type of people you are dealing with, and the rest. What may fit exactly one country does not necessarily fit another country. So during this

four month period of time we put together a concession, and I am not being dramatic, but this is the box I was carrying out to Sultan Qaboos done up in red ribbon, and I open the box and here is the Concession with a red and gold cover and all of the terms of the Concession have been printed up and all approved by His Majesty the Sultan; and here are two gold fountain pens that I was bringing out, one for the Sultan to keep as a souvenir, one for me to keep as a souvenir. This is standard operating procedure; as you know, I have major oil concessions in Indonesia and in Korea and elsewhere in the world, and I am quite familiar with the procedure of signing and putting into effect major oil concessions and developments.

Now, this was negotiated and everything was completed. It took us a little longer than we had expected. Sometimes you just cannot make exact time schedules in working things out, and we did an analysis of every known oil concession in the world - we had them together in our library - we made elaborate charts so His Majesty could see terms and details in relation to one country versus another, all over the world - not just the Arab world, and all of this was placed before His Majesty, and we had originally thought that we would complete this by around July the 23rd and the initial payment as agreed upon between His Majesty the Sultan and myself would be paid on and around July the 23rd. I make special mention of this because the Financial Secretary to His Majesty, Mr. Philip Aldous, was then a guest of my sister Marilyn and her husband Captain Gordon Hodgson in Washington, and he telephoned to me and he recorded my phone conversation. Now, in the United States you record phone conversations of

prostitutes, homosexuals, felons on the loose, gangsters and Mafia members. I don't know just in which category I am being placed, but anyway my phone conversation to a supposed personal friend who was a guest of my sister was recorded, and subsequently played to various people, and in this I stated that I will have everything completed and ready to go by July the 23rd. To be very honest with you, I do not remember the details of the conversation, in fact I didn't even remember I had the conversation, but that is of no point because subsequently I met with His Majesty the Sultan, I met with the Financial Secretary. They explained to me that what was important was to get the work done quickly and as you know I have been fairly successful over the world in my oil acquisitions, and probably have more area of the world under concession to me than any other individual. Now the reason for this - I cannot compete against major oil companies in making financial payments or the rest, but I can in development programmes because I can call a board of directors' meeting with myself in the bedroom, make an immediate decision and implement that decision, because I own my own oil company outright, and rightly or wrongly whatever decision is finally made the responsibility must rest with myself.

Now, I subsequently sent my Executive Vice President, Mr. Darrell Banker, former Assistant District Attorney of San Francisco and a very brilliant legal mind, who went out and negotiated this in final form with the Sultan. The understanding was that everything would be completed and that I would return a month from August the 8th. Now that puts us to about September the 8th, and this date is quite important. I had not realised that dates were that specifically important in Oman history before, because in twenty-two

years working in Oman I had never been held to a specific deadline or date before, and as this area has lain undeveloped for the last several hundred million years, two/three or four days either way I did not think was extremely significant. It seems that I am wrong in that regard, and two or three days is of extreme significance! So I make the point that early in September I was due to return to Oman to sign this agreement with Sultan Qaboos and to make the initial payment as agreed upon between His Majesty Sultan Qaboos and myself.

By the way the use of "Majesty" is interesting in Oman. I am the one who introduced the word "Majesty" to Oman; all previous Sultans were called "Their Highness", but as the Sultans of Oman are independent sovereign rulers in treaty relations with various countries why I felt that "Majesty" was a more appropriate title, so rightly or wrongly I introduced the title "Majesty", and you will see in my books written many years before Sultan Qaboos ascended the throne that the term "Majesty" is used exclusively by myself. Also Oman is an interesting term, because prior to my advent in the country it was called the Sultanate of Muscat and Oman. Now it is called the Sultanate of Oman. Again, if I may humbly take the credit for this, I published it this way and made a detailed explanation of this in my books on Oman published five years ago - and this is just to show my involvement in the country, in the fact that I have been interested at all times in preserving the independence of Oman, whether it be independence from the United States or independence from England or any other country. I believe that all of us who are foreigners in the country, no matter how closely associated we are, should operate as guests,

and I have always operated as a guest in Oman no matter how close my relationships were with the ruling tribal sheikhs and with the religious leaders and with the Sultan.

Now, we get back to the date of September the 8th. On August the 31st Philip Aldous, the Finance Secretary, sent a cable which was received in my Honolulu office on September the 1st, saying that my arrival was immediately looked forward to and would I please let him know when I would arrive. My Secretary, Mrs. Helen Ancona, sent back a long detailed cable which you are privileged to read if you wish, requesting that a visa be authorised immediately through the British Consulate General in Honolulu. Now I am not responsible for the laws, the rules and regulations of the Sultanate of Oman - I obey the laws, rules and regulations of the Sultanate of Oman. The law is that if you visit Oman you have a valid visa. The Sultan has authorised British Consulates and Consulate Generals all over the world to represent him with regard to the issuance of visas and so, as I have done many times in the past, we made a request that a visa be issued to me through the British Consulate General in Honolulu. This request went out on September the 2nd. With the request it was pointed out that the world's foremost biblical scholar, Professor William F. Albright, the man who made the Dead Sea Scrolls famous, was lying in a coma at the age of eighty. Professor Albright has been my Chief Archeologist for twenty-five almost thirty years. He brought me up when I lay in the hospital with polio; after the Okinawan invasion it was he who nursed me back to health. This is a new book put out a few months ago by leading biblical scholars in honour of Professor Albright, and I have the honour to have

written the introduction to this volume. In other words, there was a real reason for me to be concerned. Professor Albright has to this day, as far as I know, not regained consciousness. He has been in a coma for over thirty days - he has not even been able to recognise Mrs. Albright, and of course I was terribly, terribly concerned.

It was pointed out by my Secretary, and you may read her cable in detail, that I was ready to leave the instant a visa was authorised and issued to me by the British Consulate General in Honolulu. On the 7th September my Secretary sent another cable. I had in the meantime returned, had a little sickness, collapsed in Church - if you are going to die that is a good place to die - and was a resident of Saint Francis Hospital. Now, His Majesty the Sultan did not know this, for I did not want to concern His Majesty with my welfare. I was concerned in getting out to Oman, but it was highly played up in the newspapers in the United States, and I can show you the medical record if there is any question I was in the hospital for about six days, bed ridden under a doctor's care. But I told the doctor I would leave the hospital immediately once a visa arrived for me. After two requests, one sent on the 2nd and one sent on the 7th, for a visa and realising that I had promised His Majesty that I would return, I left hospital against the doctor's orders. My doctor is Dr. Winfred Lee of Honolulu. He is President of the Hawaii Medical Association, and he released me against his orders and best wishes.

I flew to Singapore without a visa to Oman. I arrived in Singapore, planning immediately to cable to His Majesty the Sultan upon arrival. And why did I go to Singapore? Because it was about the last spot

I could go to where I could be comfortable in good air-conditioned surroundings and could be issued a visa and then I could go direct from Singapore by way of Dubai to Muscat. Upon my arrival in Singapore I received an urgent telephone call from my Executive Vice President, Mr. Darrell Danker, saying that a cable had just been received from Philip Aldous cancelling the offer without reason. I was, of course, most surprised at the looseness of this expression as there was no question of an "offer" but a concession granted by His Majesty Qaboos bin Said, over his own signature dated 31st March, 1971. This is an important CONCESSION not an offer which will enable us to have a chance to greatly enhance the wealth of Oman and help the people, but I have many concessions, and give or take a concession here or there Wendell Phillips will somehow survive and keep going, and it was not so much my concern over the concession, it was my concern over what was happening in Muscat. For this of all things was not Arab hospitality, and this was not the way one Arab treats a fellow Arab, and I am Sheikh of the Bal Harith tribe, and have been so recognised for over twenty years, and I have a famous movie on it which has been shown at your Royal Geographical Society and before leading groups and societies all over the world. I don't think that point is open to question.

Now, I immediately sent a long cable to His Majesty Sultan Qaboos - you may read the cable, I have a copy here - I sent a cable to Philip Aldous. I attempted to phone His Majesty; I was not put through to His Majesty. This worried me very much because Arab hospitality would have certainly called for His Majesty picking up the telephone and speaking to a friend of over twenty years calling from Singapore.

My call was not returned. I spoke again to Mr. Philip Aldous who was very vague over the telephone, saying that I had delayed in coming. My reply was simply that unless I was to take Muscat by storm by besieging the walls with a machine gun escort, the normal way to enter Muscat was to have a valid visa, to arrive at the airport and have it stamped and enter through Customs, and that this was my normal way of arriving in countries! I have arrived in other ways on other occasions, but this was my normal way of arriving in Oman, and no visa had been issued to me. Mr. Philip Aldous subsequently sent a cable, and you may see that cable - and in the cable he stated that he had authorized a visa on the 6th September to the British Consulate and that it was not his fault or responsibility in any way, shape or form if the British Consulate did not receive the visa, the fault was the Telegraph Company's, and if I had any claim against anybody it was a claim against the Telegraph Company. Now this to me was highly peculiar coming from a senior Government official of Oman. I will give you the exact words: "HIS MAJESTY HAS CANCELLED OFFER". I don't know what the word offer means because we have already spent several hundred thousand dollars on preliminary geographical studies and prepared extensive maps and made service contracts and selected personnel to operate in the area, and spent hundreds of hours drawing up the Concession. But anyway he states here "HIS MAJESTY HAS CANCELLED OFFER BECAUSE OF DELAYS AND NOW INTENDS TO ADVERTISE ALL THREE AREAS OF OMAN TO COMPETITIVE TENDERS". I will skip ahead here and say this "VISA AUTHORITY SENT SEPTEMBER THE 6TH VIA CABLE AND WIRELESS AND IPT", so at least by September the

6th I was still the legal entity in Oman and the oil concession was a legal entity in Oman.

Now, you must realise that from Honolulu to Muscat in this day and age of rapid travel it still takes several days to get from Honolulu to get to Muscat on any plane schedule that you could take. If you were to leave immediately. Of course he said he sent this cable on September the 6th, but the British Consulate in Honolulu has no record, nor does the cable office have any record of any such cable being sent and received. The next wording is very interesting - "VISA AUTHORITY SENT SEPTEMBER 6TH VIA CABLE AND WIRELESS AND ITT HOWEVER YOU COULD HAVE FLOWN TO DUBAI ON SEPTEMBER 7TH". Now how would I have conceivably known to fly when no visa authority had been extended to me. I had no reason to go to Dubai. I was not going to see anybody in Dubai. Dubai is not Muscat, and I had been very ill, which is nobody's fault and it was more convenient to fly to Singapore. Mr. Aldous says "ANY LOSS SUFFERED THROUGH NON ARRIVAL OF VISA MATTER BETWEEN YOU AND TELEGRAPH COMPANY STOP REPLIES TO YOUR CABLES NOT NECESSARY AS ACTION TAKEN HERE". Well "any loss suffered through non arrival of visa matter between you and Telegraph Company" I think is extremely peculiar wording for a senior Government official of a country as distinguished, with a history as distinguished as Oman to one who has served Oman for twenty two years. In other words, because the Visa was lost and never received by the British Consul General through the mistake of Cable & Wireless or ITT, and then the two cables of the 12th and 14th September refer to the cancellation of an offer which had never existed.

Now the reason I am expressing concern over the

Sultan is that this is not, this is not in any way normal to Sultan Qaboos. There has never been a harsh word between Sultan Qaboos and myself since I met him first when he was nine years old. There has never been any disagreement - we have been intimate, close personal friends every step of the way. There has been no disagreement over my concession; over any of the terms; over any aspects of it.

When I arrived in Singapore I was unaware of the cancellation of any offer which, as I have said, did not enter into the picture. I was notified in Singapore. Subsequently, while I was in Singapore the British Consulate in Honolulu received a cable from Mr. Aldous cancelling the visa which had never been authorised in the first place! Thus, this becomes somewhat of a comedy. Now, I ask you in all fairness, how is one to go from the United States to the Sultanate of Oman to make final payment as required, to sign a concession as required, if a visa is not sent you, and I have copies of my cables to the Sultan, copies of my Secretary's cables and copies of all the detailed information from Pan American when I left from Cable & Wireless to the effect that no cable was received. This is not a court scene, and we are not before an international tribunal of justice, so I am not going to read them to you, but they are available for you to read if you are in any way interested.

I would like to point out in the News Release that was given to you there is one mistake, one error in here. I am not the Economic Adviser and Representative for His Majesty Sultan Qaboos bin Said, King of Oman. When His Majesty Sultan Qaboos ascended the throne - when you are a United States citizen you have to register with the United States

Department of Justice when you represent a foreign ruler; you have to submit reports every six months to the Department of Justice as a United States citizen of your activities on behalf of that ruler. This I did for many, many, many years when His Majesty Sultan Said bin Taimur was the ruler. However, when Sultan Qaboos became ruler I was re-entering that country as an active participating oil company; not just as Wendell Phillips the Archeologist and Explorer and the friend and adviser of the Sultan, and therefore I did not feel it fair to Sultan Qaboos that I have any advantage by being his Economic Representative and Adviser while at the same time consulting with him on terms of a concession which I trust would be mutually advantageous to the people of Oman and to the Wendell Phillips Oil Company. Thus I resigned, and so please on this Who's Who Rundown which I have barely skimmed over, that seemed to me the only error that I noticed there.

Now, as the situation stands right now, my reason for this Press Conference is mainly my concern over Sultan Qaboos. I cannot reach him through cables; I cannot reach him through telephone calls. I have for the first time in twenty-two years lost total access to the Sultan or King of Oman, and thus if I use the Press, and being a former war correspondent and newspaperman myself I know the power of the Press, and I am therefore at this time appealing directly to the Sultan that if these messages did not reach him and if I have not in any way personally become offensive to him, and as the concession is totally drawn up, as all funds are available for payment and development and all personnel ready for developing the country to the maximum extent, and as Mr. John Arps, who is probably America's most famous and distinguished Consulting Geologist did the initial geology, and I

have his report here - and I will even show you his report that he wrote at great expense to myself, for Mr. Arps does not come cheaply. Mr. Arps was also my Consulting Geologist on Korea and on Indonesia and won the Degaulier Award last year as America's most distinguished Economic Oil Geologist, and is a very famous and celebrated and highly decorated personality in the oil world. We have done everything to please His Majesty, to fulfil our time schedule and to carry out the obligations which I feel that we had for His Majesty.

My Senior Vice President, William Terry, was with His Majesty a few hours before there was ever any mention of the question of the cancellation of my non-existent offer, and not one word was mentioned to my Senior Vice President William Terry, who has been a friend of the Sultan also since the Sultan was a boy. Mr. Terry was famous for taking the motion picture of the Japanese attack on Pearl Harbour, and has been my partner in archeological explorations and oil for the past twenty six years, and Mr. Terry has been advising the Sultan on various economic matters and I have made Mr. Terry available; I have paid his travel and his expenses, his salary and the rest as a contribution to Oman, and I planned to continue to do so. But no word was said to Mr. Terry of any impending cancellation of any kind - yet before Mr. Terry was able to fly back to the United States, and he flew directly from Muscat to New York, while in the air "an offer" was cancelled. Now this to me is very peculiar as there is no question at all of any offer.

Mr. Terry gave assurances that I was in the hospital and that I would be coming immediately - that I was merely awaiting for the arrival of a visa. To this day that

visa has never arrived. I do not have a visa for Oman in my passport - if you want to see the passport I will show it to you. When I went to Singapore I did not have a visa; certainly if one has been issued to the British Consulate in Honolulu as Mr. Aldous said one was supposed to be issued, if they got it I would have gone and picked it up, but one was not issued so therefore I was unable to fulfil my obligations to arrive on schedule to sign the concession to pay the financial obligations required for one single - the reason - no visa was issued to me and I could not enter the country illegally. My Executive Vice President, Darrell Danker, could have signed the concession when he was out there and drew it up, except that it was not in such pretty form as it is. He had with him the money to pay, so money is not a problem here. It is not necessary that I go to Muscat to make a payment of money - I have plenty of trusted people working for me who can deliver a cheque for the money. The point was made to Darrell Danker that His Majesty Qaboos would like to have me present as President of the Wendell Phillips Oil Company to sign and complete all arrangements, and would I come around the early part of September, and the answer was of course I would, and even though I was in the hospital I would have gotten out of the hospital and left at any time. As it was, I left the hospital on the 12th and flew directly that same day to Singapore without a visa; checked into the Shangri-la Hotel in Singapore when all this developed on me. My reason for going to Singapore was that I felt I could not stand by and wait any longer for the Honolulu Consulate General to acknowledge a visa or give me a visa, and I thought that one could easily be sent to me in Singapore, and when you are an ill man and you are out of the hospital a time change is very difficult on you and the flight from Honolulu to Singapore is about

thirteen to fourteen hours and from Singapore to London is nineteen hours.

QUESTION: There was another reason, Wendell, which I think you also had for wanting to see the Sultan. Did you want to discuss that one as well?

Oh yes, I wanted to please the Sultan very much. I mean basically I'm an archeologist and explorer. Oil was a secondary development which came about through the Sultan's father giving me an oil concession back in the early '50s, at which time I knew far less about oil than any of you gentlemen present. Since then I have learned a little bit through trial and error over the world - we hope through more successful trial and unsuccessful error. But anyway, I wanted to please His Majesty by announcing that I hoped to put a major archeological expedition with some British Scholars on the expedition into Oman next year, and I knew this would please His Majesty because His Majesty is interested in the scientific and archeological development of his country, and the only way you learn about the history and pre-history of a country is to excavate; you don't learn about it by staying around thinking about it or by attending University. You have to go out and start digging and learn from the digging, and this is what I wanted to do and this was one of the surprises that I had hoped to please His Majesty with. Was that your point?

Yes. Yes.

Have I missed any points George?

GEORGE: The kind of basic economic value which you yourself had brought to Oman is maybe worth

Well, this is a subject that has been highly publicised over the years - my friendship to Oman, my love of the Omani people.

I might say that it is highly significant that when I was in London a short time ago visiting with His Majesty Sultan Qaboos and Philip Aldous the Financial Secretary, I also paid my respects at the Dorchester Hotel to the former Sultan Sa'ad bin Taimur, who is now in retirement and is still a very dear friend of mine. Although I am working full time and owe total allegiance to the present Sultan Qaboos, friendships in the Arab world are not easily given and are not easily taken away, and just because a man is no longer the ruler of a country that does not in any way affect personal friendships, and he made a significant comment to me. He said "with regard to that oil concession, Wendell, that I gave you and that my son has now reaffirmed" he said "you will never get it in the end, it is going to be taken away from you", and I was very puzzled at the time that the old Sultan made this statement. So obviously there are mysterious powers at work. Powers which I do not understand, and obviously there must be other reasons than the reasons given, because it simply does not make sense to cancel out a twenty-two years friendship and allegiance to a country, and for all practical purposes I am now banned out of Oman, because I have been refused a visa simply because no visa was sent to me, and so all I can say is that I am highly concerned with the welfare of young Sultan Qaboos. I am highly concerned with the quality and stature of the advisers and counsellors he has around him, and I am highly concerned over what has transpired in the last few days, because -

1) I should have been given the courtesy to visit the country

ii) If I am not allowed to visit the country, my cables should have been replied to, common courtesy calls for this. and my cables to His Majesty the Sultan were not answered, and you can read the cables here in detail. I think I have just one here in front of me that I will just read to you. When I arrived in Singapore -

"HIS MAJESTY SULTAN QABOOS, SULTAN OF OMAN,

MUSCAT, ARABIA

MY DEAR QABOOS

AFTER WAITING HONOLULU ALMOST TWO WEEKS YOUR GOVERNMENT FAILED TO SEND ME REQUIRED VISA FLEW SHANGRILAH HOTEL SINGAPORE TO BE NEAR YOU FOR IMMEDIATE ARRIVAL MUSCAT BUT BRITISH CONSUL HONOLULU HAS BEEN GIVEN NO AUTHORITY TO GIVE ME VISA I FOLLOWED YOUR EXACT INSTRUCTIONS GIVEN DARRELL BANKER GIVING ME EXTRA MONTH FROM AUGUST EIGHTH BUT STILL TO THIS DAY HAVE RECEIVED NO VISA HAVE ALL MONEY READY TO GIVE YOU CONCESSION FULLY PRINTED IN RED AND GOLD SPENT SEVERAL HUNDRED THOUSAND DOLLARS ALREADY ON OUR CONCESSION HAVE WORKED DAY AND NIGHT TO PLEASE YOU IN THIS MATTER PLEASE ALLOW ME TO VISIT YOU URGENTLY I KNOW YOU WILL BE PLEASED WITH MY PRESENTATION
BEST WISHES WENDELL"

No reply was received to that cable. I sent another cable to His Majesty Sultan Qaboos "MY DEAR QABOOS (this was the next day from Singapore)

AS YOUR OLDEST LOYALIST TRUEST FRIEND WHAT HAVE I DONE TO OFFEND YOU YOUR FRIENDSHIP FAR MORE IMPORTANT TO ME THAN ALL THE OIL CONCESSIONS IN THE WORLD AND WITH REGARD TO THE ONE YOU SO KINDLY GAVE ME I HAVE ALREADY CARRIED OUT YOUR

PERSONAL INSTRUCTIONS GIVEN TO ME IN LONDON ONE HUNDRED PERCENT STOP MRS. ERSKINE AT THE BRITISH CONSULATE HONOLULU HAS JUST INFORMED MY SECRETARY AND SHE HAS INFORMED ME IN SINGAPORE THAT THE CONSULATE RECEIVED INSTRUCTIONS NOT TO ISSUE ME VISA".

Now, they received instructions not to issue me a visa after I had arrived in Singapore and had waited for two weeks for a visa, but as the Consulate points out they never had instructions to issue a visa in the first place and they have so notified the British authorities in London. Now these are facts that I am stating which may be checked and re-checked and we have checked and re-checked them.

QUESTION: Do you think that there are any questions now, Wendell, from the floor -

Well, I would just like to say what I again said -

THE BRITISH CONSULATE IN HONOLULU NOTIFYING BRITISH AUTHORITIES LONDON THAT HONOLULU HAS NEVER RECEIVED DURING PAST FEW WEEKS ONE SINGLE WORD TO ISSUE ME VISA IN FIRST PLACE THUS I CAME TO SINGAPORE STILL WITHOUT VISA TO AWAIT YOUR PERMISSION TO VISIT YOU SO READY WITH EVERYTHING ANY TIME WITHIN LAST TWO WEEKS BUT NO VISA WAS AVAILABLE I FULLY BELIEVE THAT ALDOUS SENT ME A VISA BUT CONSULATE HONOLULU CONFIRMS THAT NO VISA RECEIVED DEAR CABOOS WHAT COULD I DO MY SECRETARY SENT TWO CABLES TO ALDOUS HIS CABLE ABOUT CONCESSION ARRIVED HONOLULU AFTER MY DEPARTURE SINGAPORE CABLED YESTERDAY CANCELLING VISA WHICH IS BEYOND BELIEF BECAUSE I HAD NO VISA TO CANCEL HOW CAN I SERVE YOU AND PAY ALL OBLIGATIONS WHEN NOT ALLOWED TO VISIT YOU AS YOU KINDLY LEFT OIL DETAIL TO

MY EXPERIENCED HAND I SIGNED SERVICE CONTRACTS
EMPLOYED PERSONNEL RESERVED EQUIPMENT TO ASSURE
QUICK BEGINNING OUR OPERATIONS ALL UNDER AGREEMENT
AS APPROVED BY YOU BEST WISHES WENDELL.

Now, if you have any questions I would be happy to try to answer them, again realising that I am not in as good a shape as I should be but I tried to present the situation. Oil concessions are relatively unimportant in my young life; we have lots of them. We do our best to develop them - sometimes we got a lot of oil; sometimes we do not. In Dhofar we spent over \$90,000,000 attempting to find commercial production - we found a billion barrels of low gravity crude, we did not find commercial production. Certainly Shell was stimulated, and I don't think they would deny this, to begin work in the rest of Oman which has been held by I.P.C. for many, many, many years without doing one single bit of work to match my pioneering work in Dhofar.

Subsequently, this resulted in the development of over 300,000 barrels a day, which is in the main the sole income coming into Sultan Qaboos. To the extent that I am responsible for that I leave it to your judgement. All I can say is that the treatment which has been afforded me is not the treatment that I would in any way expect from Sultan Qaboos, from one Arab to another Arab who has been associated with a country - who probably knows the history of the country as well as anybody in the world, and whose books have been best sellers on the country, and whose every effort has been to further the country and to help the people. I have never made one nickel or dollar from the Kingdom of Oman or from the people of Oman or from the Sultanate of Oman. The former Sultan, at one time when I was very young working in the country and had been imprisoned in Yemen and wiped out in 1952 I ran up a bill of \$12,000, and the

present Sultan's father gave it to me as a contribution, which was very generous on his behalf - which enabled us to discover the ancient Frankincense city of Sumhuram in the province of Dhofar, which has been featured all over the world. And this is where the frankincense and myrrh, if the story in Matthew is true of the three so called wise men paying tribute to the baby Jesus. If that story is true the frankincense came from the city of Sumhuram, for this was the Frankincense capital of the ancient world, and I have discussed this in my new book on the life of Jesus which I have worked on for eight years and have now just completed and it is now almost ready to go to press.

The first part of the report is devoted to a
 description of the work done during the
 year. It is divided into two main parts,
 the first of which is a general survey of
 the work done during the year, and the
 second is a more detailed account of the
 work done during the year. The first part
 is divided into three sections, the first
 of which is a general survey of the work
 done during the year, and the second is
 a more detailed account of the work done
 during the year. The second part is
 divided into two sections, the first of
 which is a general survey of the work
 done during the year, and the second is
 a more detailed account of the work done
 during the year.

FRANK & CO BOND BALTIMORE

Exhibit B



S A L A L A H

March 7, 1971

From: Qaboos bin Said,
Sultan of Oman.
To: Dr. Wendell Phillips.

Greetings,

With reference to our conversation regarding the offshore areas of Our Sultanate from Ras al Hadd to Ras Minji, We are pleased to grant you an Oil Concession for the area as defined hereunder, allowing you a period of four months from April 1, 1971 to submit to Us proposed arrangements which will be subject to Our approval.

The area shall be;

"From a point at Ras al Hadd where the parallel of latitude $22^{\circ} 30'$ intersects the coastline, eastwards to a point on the continental shelf at a depth of 2000 feet, thence southwards following the 2000 foot isobar to the intersection of the meridian of longitude $59^{\circ} 15'$, thence southwards to Ras Minji following a line three nautical miles from the coastline, excluding therefrom the territorial waters but including the islands of Masira and Jezirat Shaqhaf and their territorial waters and the continental shelf to a depth of 2000 feet."

Qaboos bin Said

SULTAN OF OMAN.

Exhibit C

Sultanate of Oman
Ministry of Foreign Affairs
Muscat.



سلطنة عمان
وزارة الخارجية
مسقط

No. 1072/P-2/J

September 6, 1971.

The Ministry of Foreign Affairs, Sultanate of Oman presents its compliments to the British Embassy in Muscat and has the honour to ask to kindly authorize by cable the British Consul General in Honolulu to grant single journey visa on application to Dr. Wendell Phillips U.S. National visiting Muscat for three weeks stay.

The cost of the cable will be debited to the Department of Financial Affairs.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to HEM's Embassy the assurances of its highest Consideration.



The British Embassy,
Muscat.

C.C.
✓ Financial Affairs



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PLEASE DEBIT FINANCIAL AFFAIRS DEPT						

Notice: In the absence of any indication to the contrary it will be assumed that this telegram is to be charged at full rate and treated accordingly. PLEASE WRITE THE NAME AND ADDRESS IN CAPITAL LETTERS.

مذكرة: في حالة عدم أية اشارة مسجلة وتعتبر البرقية كعادية وتخط عليها اجرة كاملة. الرجاء كتابة البرقية بخط واضح وبمفهوم

CLASS AND ADDRESS LTF BRITAIN HONOLULU

الإشارة:
المرتلان:

VS/1 ON APPLICATION PLEASE ISSUE SINGLE JOURNEY OMAN ENTRY
VISA VALID THREE WEEKS STAY ONLY TO DR KENDALL PHILIPS
QUOTING AS AUTHORITY SULTANATE LETTER 1072/P2/J DATED 6 SEPTEMBER+
FRODOLOM

I request that the above telegram be forwarded subject to the conditions printed on back of this form by which I agree to be bound.

اكد ارتباطي بالشروط المطبوعة خلف هذه الورقة واريد ان يتقبلها مني وفقا لذلك.
اسم وعنوان المرسل كما ملين مع الاضاه والماتق:
(ليس للارسال)

Signature, Telephone and address of sender:

(Not to be telegraphed)



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P.T.O

CRANE & CO BOND PAID

Exhibit D



Oman Concession/1.

STATEMENT ON BEHALF OF THE WENDELL PHILLIPS OIL
COMPANY AND DR. WENDELL PHILLIPS.

The following statement has been issued today, Tuesday the 28th September, 1971 on behalf of Dr. Wendell Phillips and the Wendell Phillips Oil Company.

" The Wendell Phillips Oil Company having consulted leading specialists in international law confirms the opinion publicly expressed by Dr. Wendell Phillips at a press conference in London on the 17th September, 1971 that the oil concession incorporating a 525 mile offshore area of Oman from Ras al Hadd to Ras Minji granted to Dr. Wendell Phillips personally by H.M. Sultan Qaboos bin Said, Sultan of Oman and signed by His Majesty personally on the 7th March, 1971 is valid legal and binding.

The Wendell Phillips Oil Company and Dr. Wendell Phillips reserve the right to hold legally responsible, for an amount in damages equivalent to the expected return and benefit of the said concession and all or any expenses heretofore incurred since the involvement of Dr. Wendell Phillips in this concession since 1965 to Dr. Wendell Phillips and or the Wendell Phillips Oil Company, any individual company consortium group or any other national or international interest or interests which take any action

Oman Concession/2.

unauthorised by the Wendell Phillips Oil Company or Dr. Wendell Phillips to endanger the concession as granted to Dr. Wendell Phillips in any way by bidding, surveying, exploring, exploiting or by carrying out any other unauthorised activity in connection with the concession either within or outside the designated concession area".

28th September, 1971.

Issued on behalf of The Wendell Phillips Oil Company and Dr. Wendell Phillips by Metcalfe International.

Further information from: G.F. Metcalfe - Tel: 01- 437 6271.

01- 736 2879.

COLLEGE BILTON MASS

Exhibit E

OLWINE, CONNELLY, CHASE, O'DONNELL & WEYHER

290 PARK AVENUE, NEW YORK, N.Y. 10017

212 688-0400

PAUL J. CHASE
JOHN LOGAN O'DONNELL
HARRY F. WETHER
LEO P. ARNABOLDI, JR.
WM. SONDERICKER
ERNEST H. LORCH

CHARLES M. WAYGOOD
JAMES E. TOLAN
ROGER MULVHILL
WIRT P. MARKS, III
JOHN F. WALSH, JR.

RICHARD E. OLWINE
1813-1884

JOHN E. CONNELLY, JR.
EDWARD T. JOHNSON
COUNSEL

CABLE ADDRESS: OLCONCH

J. ALEXANDER ONDERDONK
LEONARD J. CONNOLLY
EDWARD A. VROOMAN
THANE BENEDICT III
CHARLES A. BONNES
WALTER H. BEESE
DONALD B. BARRETT
CHARLES M. MCCAGHEY
J. STEPHEN SHEILS
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LEONARD P. HORAN
PAUL O. FREEMAN
ROBERT J. HETTUNE
ROBERT W. BOYD, JR.
RICHARD F. YOUNANS
MARI, O. H. MURPHY
LEONARD SHARENOW
STEPHEN A. HAGIDA

October 1, 1971

Your Majesty:

This will confirm that the following cable was sent to you today:

"HIS MAJESTY KABOOS BIN SAID
SULTAN OF OMAN
MUSCAT, OMAN, SOUTH ARABIA

YOUR MAJESTY, WE WOULD LIKE TO INFORM YOU THAT THIS FIRM, OLWINE, CONNELLY, CHASE, O'DONNELL & WEYHER, WHICH ENGAGES IN INTERNATIONAL WORK AND HAS REPRESENTED DR. WENDELL PHILLIPS IN THE PAST WILL BE REPRESENTING DR. PHILLIPS IN ANY LEGAL ACTION OR ACTIONS THAT MAY BE NECESSARY AGAINST OTHER INDIVIDUALS OR COMPANIES RESULTING FROM THE RECENT MISUNDERSTANDINGS REGARDING DR. PHILLIPS'S OFFSHORE OIL CONCESSION FROM RAS AL HADD TO RAS MINJI GRANTED BY YOU MARCH 7, 1971. CONFIRMING LETTER FOLLOWS. RESPECTFULLY."

Respectfully,

Charles M. Waygood
Charles M. Waygood,
A Member of the Firm:

His Majesty Kaboos bin Said,
Sultan of Oman,
Muscat, Oman, South Arabia

W

CRANE & CO. 2010 DALLAS